

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

WILLIAM RAY COLLIER v. STATE OF TENNESSEE

Appeal from the Criminal Court for Davidson County
No. 2000-C-1553 Cheryl A. Blackburn, Judge

No. M2008-01903-CCA-R3-HC - Filed June 15, 2009

This matter is before the Court upon the State's motion to affirm the judgment of the post-conviction court by memorandum opinion pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Upon a review of the record in this case, we are persuaded that the post-conviction court properly dismissed the petition for post-conviction relief, and we conclude this case meets the criteria for affirmance pursuant to Rule 20 of the Rules of the Court of Criminal Appeals. Accordingly, the State's motion is granted and the judgment of the trial court is affirmed.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed
Pursuant to Rule 20, Rule of the Court of Criminal Appeals

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which DAVID H. WELLES and JERRY L. SMITH, JJ., joined.

William Ray Collier, Clifton, Tennessee, pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael E. Moore, Solicitor General; John H. Bledsoe, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; Bret Gunn, Assistant District Attorney General, for the Appellee, State of Tennessee.

MEMORANDUM OPINION

A Davidson County jury found the Petitioner guilty of two counts of possession of a Schedule I drug with intent to sell or deliver within 1000 feet of a school, one count of possession of a Schedule I drug with intent to sell or deliver, and three counts of driving on a suspended license. On January 10, 2001, the trial court sentenced the petitioner to serve 71 years. The Petitioner appealed, and this Court affirmed the judgements on appeal. *See State v. William Ray Collier*, No. M2001-00893-CCA-R3-CD, 2002 WL 170731 (Tenn. Crim. App., at Nashville, Feb. 4, 2002). The

Petitioner subsequently filed a petition for post-conviction relief on February 21, 2003. The post-conviction court denied it on October 25, 2004, and the Petitioner did not appeal. The Petitioner then filed a motion to reopen his petition for post-conviction relief on December 20, 2007, and the post-conviction court denied him relief in an order filed January 25, 2008. The Petitioner appealed that denial of relief, and this Court issued an order denying his appeal. Specific to this opinion, the Petitioner filed a second petition for post-conviction relief on June 19, 2008, claiming that the language for Count 4 in the indictment against him was illegal because it did not specify the amount of drugs he possessed and that his sentence was illegally enhanced using the Drug-Free School Act. The post-conviction court denied that petition on June 24, 2008, and the Petitioner appealed.

When it denied the Petitioner's second petition for post-conviction relief, the post-conviction court initially pointed out that this second petition violates the post-conviction act's limit of one petition for post-conviction relief per petitioner per case. Additionally, the post-conviction court found that the Petitioner waived his claim that his indictment was illegal because he failed to raise it at trial. It also found that the Petitioner had previously litigated his claim that his sentence was illegal, so that issue was not proper for review. The trial court also reviewed the Petitioner's claim as a habeas corpus claim, in the event that the Petitioner had erroneously titled his claim, and it found that the Petitioner's judgments were not void on their face.

In Tennessee, a petitioner is limited to filing one petition for post-conviction relief per judgment. Specifically, "In no event may more than one (1) petition for post-conviction be filed attacking a single judgment. If a prior petition has been filed which was resolved on the merits by a court of competent jurisdiction, any second or subsequent petition shall be summarily dismissed." T.C.A. § 40-30-102(c) (2006). The statute then clarifies that it allows for the re-opening of a post-conviction proceeding in limited circumstances. T.C.A. § 40-30-102(c).

The Petitioner in this case filed an initial post-conviction petition in February 2003, and he was permitted to reopen that proceeding in December 2007. After the post-conviction court denied the Petitioner relief, he appealed, and this Court reviewed his case. This Court subsequently denied him relief. Both the post-conviction court and this Court are "court[s] of competent jurisdiction." Thus, he has utilized his one petition for post-conviction relief. The petition that forms the basis of this appeal is the Petitioner's second post-conviction hearing, and pursuant to the Tennessee Code Annotated, it "shall be summarily dismissed." T.C.A. § 40-30-102(c).

If we analyze this claim as a habeas corpus claim, as the post-conviction court did, the Petitioner still does not prevail. Article I, section 15 of the Tennessee Constitution guarantees the right to seek habeas corpus relief. *See Faulkner v. State*, 226 S.W.3d 358, 361 (Tenn. 2007). Although the right is guaranteed in the Tennessee Constitution, the right is governed by statute. T.C.A. § 29-21-101 (2006) *et seq.* The determination of whether habeas corpus relief should be granted is a question of law and is accordingly given de novo review. *Smith v. Lewis*, 202 S.W.3d 124, 127 (Tenn. 2006); *Hart v. State*, 21 S.W.3d 901, 903 (Tenn. 2000). Although there is no statutory time limit preventing a habeas corpus petition, the grounds upon which relief can be granted are very narrow. *Taylor v. State*, 995 S.W.2d 78, 83 (Tenn. 1999). It is the burden of the

petitioner to demonstrate by a preponderance of the evidence that “the sentence is void or that the confinement is illegal.” *Wyatt v. State*, 24 S.W.3d 319, 322 (Tenn. 2000). In other words, the very narrow grounds upon which a habeas corpus petition can be based are as follows: (1) a claim there was a void judgment which was facially invalid because the convicting court was without jurisdiction or authority to sentence the defendant; or (2) a claim the defendant’s sentence has expired. *Stephenson v. Carlton*, 28 S.W.3d 910, 911 (Tenn. 2000); *Archer v. State*, 851 S.W.2d 157, 164 (Tenn. 1993). “An illegal sentence, one whose imposition directly contravenes a statute, is considered void and may be set aside at any time.” *May v. Carlton*, 245 S.W.3d 340, 344 (Tenn. 2008) (citing *State v. Burkhart*, 566 S.W.2d 871, 873 (Tenn. 1978)). In contrast, a voidable judgment is “one that is facially valid and requires the introduction of proof beyond the face of the record or judgment to establish its invalidity.” *Taylor*, 995 S.W.2d at 83; see *State v. Richie*, 20 S.W.3d 624, 633 (Tenn. 2000).

After a close review of the record and the applicable law, we conclude that the Petitioner’s judgments are not void on their face. The Petitioner’s claims about the indictments in this case, even if true, would not result in void judgments or expired sentences. As such, the Petitioner would not be entitled to habeas relief.

Upon due consideration of the pleadings, the record, and the applicable law, this Court concludes that the Petitioner’s second petition for post-conviction must be dismissed. The Petitioner is also not entitled to habeas corpus relief. Accordingly, the State’s motion is granted, and the judgment of the trial court is affirmed pursuant to Rule 20, Rules of the Court of Criminal Appeals.

ROBERT W. WEDEMEYER, JUDGE